

1 THE JUROR: Yes, ma'am.

2 THE COURT: And, Ms. Harless, you did not  
3 participate; is that correct?

4 THE JUROR: Yes.

5 THE COURT: Counsel, do you all want to inspect  
6 the jury verdict form? Come to the bench, please.

7 (Bench conference on the record.)

8 THE COURT: They have made a finding of  
9 willfulness. At this time I will instruct the jury on it.

10 Plaintiffs, what other evidence, if any, do you want to  
11 present?

12 MR. YOUNG: Is the 30(b)(6) witness available?

13 MR. MANNING: Are you talking about Sandra Lyew?

14 MR. YOUNG: Yes.

15 MR. MANNING: She is in another hearing today.  
16 She is not in West Virginia.

17 MR. YOUNG: She was designated as the witness to  
18 give testimony as to the net worth of this corporation.  
19 However, I have the most recent filing with the SEC of this  
20 defendant, which shows the net worth or actual assets. And  
21 this Court, under the Rules of Evidence, can take judicial  
22 notice of it because it's -- I don't have the exact cite  
23 here, but it's a government document required to be filed  
24 under penalty of fine and imprisonment. It's the most  
25 recent financial document of Ocwen Financial Corporation,

1 and I -- that's all I'd want to offer into evidence.

2 THE COURT: Mr. Manning?

3 MR. MANNING: May I see a copy of it?

4 THE COURT: If you all want to, yes, you can.

5 (Bench conference concluded.)

6 MR. MANNING: Your Honor?

7 THE COURT: Yes, sir.

8 MR. MANNING: The proposed offering by the  
9 plaintiff is a lengthy document. May I have a moment to  
10 review it?

11 THE COURT: Yes, sir.

12 (Pause.)

13 THE COURT: Ladies and gentlemen of the jury, you  
14 have been in your jury lounge since 1 o'clock. Why don't I  
15 give you a recess, and while you are out, don't discuss the  
16 case any further or permit anyone to discuss it with you in  
17 your presence.

18 And be in your jury lounge at half after the hour.

19 We'll stand in recess.

20 (Jury exited the courtroom at 3:14 p.m.)

21 MR. YOUNG: May I approach the Court -- or the  
22 clerk, Your Honor?

23 THE COURT: Yes.

24 MR. YOUNG: I'd like to have that marked next in  
25 order.

1 I told Mr. Manning Friday that if the jury returned the  
2 verdict today on willfulness, I was going to recall the  
3 corporate witness.

4 Now, we approached the bench earlier. It's the first  
5 time I heard she was somewhere else. She was never excused  
6 from this case. In lieu of calling Ms. Lyew, I'm offering a  
7 public record that Ocwen filed with the Securities and  
8 Exchange Commission.

9 I have not only the 10-Q for the period ending the last  
10 fiscal year, I also have the updated filing -- excuse me.  
11 10-K is what we have marked as the plaintiff's exhibit next  
12 in order, and I also have Ocwen's financial first quarter  
13 report, which is a publication on Ocwen stationery filed  
14 with the SEC, showing their financial position as of the  
15 first quarter of 2016.

16 MR. NOLAN: Mr. Manning, anything further?

17 MR. MANNING: Yes, Judge. The mention of --

18 THE COURT: Don't use your phone while you're  
19 addressing me.

20 MR. MANNING: I need to clarify because Mr. Young  
21 said he talked with me about Ms. Lyew.

22 THE COURT: Well, you can make your  
23 representation. I am going to accept your representation,  
24 but you don't use your phone while you're addressing the  
25 bench.

1           Go ahead, please.

2           MR. MANNING: I understand, Judge. I apologize.

3           It was by e-mail after the witness had been dismissed.  
4           So this court -- court was over. This was on Friday. There  
5           is no mention. And then I get an e-mail Friday night from  
6           Steve Broadwater, and that's what I was going to clarify for  
7           Your Honor.

8           In terms of the issue of the documents themselves, it's  
9           a prejudice issue, Judge. There's -- there isn't notice of  
10          what they intend to offer. That's, again, it gets back to  
11          the rules, and if they intend -- even if it's judicial  
12          notice, they still have to identify what they intend to  
13          offer for purposes of judicial notice.

14          Judicial notice is -- is just a potential exception to  
15          hearsay. It establishes authenticity. It's not going to  
16          result in an excuse for prejudice. And it hasn't been  
17          identified prior to this moment.

18          THE COURT: I want to know what it is you want to  
19          designate, Mr. Manning.

20          MR. MANNING: I -- I haven't had the opportunity  
21          to hop on the SEC's website in order to determine what to  
22          counter-designate.

23          THE COURT: Okay. I'm going to allow the  
24          document. I don't think it came as a surprise to anyone  
25          that a verdict might come in today, and if it came in under



1 willfulness, that the issue of punitive damages would be at  
2 issue.

3 The 30(b)(6) witness is not available to testify, and  
4 in the interest of proceeding, I do not believe that this  
5 prejudices your client. Your client's fully aware of these  
6 documents. Even though they might not have known that the  
7 plaintiff was going to submit the documents, it's my  
8 understanding they are submitting them in lieu of the fact  
9 that Ms. Lyew is not here present to testify.

10 So I am going to permit it here and preserve Ocwen's  
11 objection and exception.

12 You all can review this instruction on punitive damages  
13 that I intend to give to the jury.

14 MR. MANNING: Your Honor, is this a copy that I  
15 can write on?

16 THE COURT: Yes, sir.

17 Plaintiff have an objection to the punitive damages  
18 instruction?

19 MR. YOUNG: The plaintiff has no objection to that  
20 instruction, Your Honor.

21 THE COURT: All right. Mr. Manning, any  
22 objection?

23 MR. MANNING: I've almost finished it. I'm on the  
24 last page.

25 No objection, Your Honor.

1 the rights of others. They are intended to deter the  
2 defendant and others from engaging in a similar course of  
3 conduct in the future.

4 Punitive damages are not compensation for injury. An  
5 award of punitive damages means that you, the jury, believe  
6 that the defendant should be punished for its conduct as  
7 proven by the evidence in this case.

8 A plaintiff is not entitled to punitive damages as a  
9 matter of right. In other words, even if you should find  
10 that a defendant's conduct rises to the level of gross  
11 fraud, malice, or oppression, wanton, willful, or reckless  
12 conduct, as you have in this case as to willfulness, the  
13 decision to impose or to withhold punitive damages lies with  
14 your sound discretion. However, if you determine that  
15 punitive damages are appropriate, you may award them even if  
16 you do not award compensatory damages, or if you award only  
17 minimal compensatory damages.

18 The amount of punitive damages, if any, that may be  
19 awarded is that amount of damages which would be sufficient  
20 in the jury's judgment to punish the defendant and to deter  
21 others from engaging in a similar course of conduct.

22 In determining the amount of punitive damages, if any,  
23 to award in this case, you should take into consideration  
24 all the circumstances surrounding the particular occurrences  
25 involved here, including the nature of defendant's

1           The award, if you decide that's appropriate, has to be  
2 enough to punish this defendant, to make him take notice.

3           You know, if you got -- if I got a \$1,000 speeding  
4 ticket, my goodness, I am going to -- I am going to take  
5 notice.

6           But this is a \$7 billion corporation. If you look at  
7 the second exhibit, the short exhibit, this corporation at  
8 the end of the first quarter of 2016 had \$7.4 billion.

9           Now, on these documents, it says 7,407,110, but they  
10 leave off the last three zeros. It's not 7 million of  
11 assets, it's 7.4 billion.

12           Cash on hand. At the end -- next page. Cash on hand.  
13 At the end of March 2016, they had \$280 million cash on  
14 hand.

15           One tenth -- or one percent of the cash in hand alone  
16 that they have as of March is \$2.8 million. One tenth of  
17 one percent of the cash they have available as of the end of  
18 March is \$280,000.

19           Whatever penalty, if you decide to award a penalty, it  
20 has to be enough to sting. It has to be enough to say,  
21 Ocwen, you better fix your system. It's broken. If not,  
22 this same system is going to chew up and spit out other  
23 people just like Dave Daugherty. Other people who are  
24 trying to refinance. Other people who can't get illegal,  
25 wrong things off of their credit reports. Other people in

1 pay on a monthly basis. But the full balance is owed.

2 And that's relevant when we talk about some of these  
3 figures on the sheets. Because just pointing to a bottom-  
4 line number doesn't tell you what those assets are.

5 And I want to tell you what those assets are because  
6 the forms are -- are somewhat complicated. I would turn  
7 your attention first to the smaller sheet, because this is  
8 the one that's the most recent. This is the one from April  
9 27, 2016. And, specifically, it describes how, in just the  
10 first quarter of 2016, my client had a pre-tax loss in the  
11 first quarter of \$102 million. It's tough all around in the  
12 economy. And Ocwen employs a lot of people.

13 The second thing -- this is all on the first page of  
14 this summary. The servicing record. Again, you've heard my  
15 client's a loan servicer. When people don't pay their  
16 bills, it's not collecting that money to be distributed to  
17 whoever owns the loan. My client didn't lend this money.  
18 It's servicing it for someone else, another bank.

19 And in this case, this is an example where  
20 Mr. Daugherty, that money that's been owed for two years,  
21 hasn't been collected to pay off that other bank. And as a  
22 result, you'll see a similarity on this sheet, on the first  
23 page, servicing recorded, there is \$68 million in pre-tax  
24 losses just on the servicing piece. That's 68 million loss,  
25 first quarter, just on servicing.



1           Additionally, there is \$32 million in loss on MSR fair  
2     value changes. These loans are part of servicing pools; a  
3     big batch of them are serviced. And when people don't pay  
4     them --

5           MR. YOUNG: Objection, Your Honor. Counsel can't  
6     testify and give explanation to the jury of --

7           THE COURT: The objection to testifying and going  
8     beyond what's contained in the documents is sustained.

9           And your time is just about up, Mr. Manning.

10          MR. MANNING: So I'll just read from the last  
11     paragraph.

12          "Unfortunately, \$30 million of monitored costs and \$33  
13     million in MSR value decline from the drop in interest rates  
14     during the quarter negatively impacted the first quarter  
15     results."

16          I want you to have the complete picture here.

17          Now, the Court instructed you specifically on the  
18     standard. For this, the standard is much higher. The Court  
19     instructed you that this is the highest civil standard that  
20     any bank can be held -- held to. They have to prove clear  
21     and convincing evidence.

22          THE COURT: Your time is up, counsel.

23          MR. MANNING: And so for that reason, I'd ask you  
24     to review the documents and award zero dollars in punitive  
25     damages.